

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES WHITLOW DELANO,

Plaintiff,

- against -

MARLO MARKETING COMMUNICATIONS,
INCORPORATED

Defendant.

Docket No. 17-cv-6721

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff James Whitlow Delano (“Delano” or “Plaintiff”), by and through his undersigned counsel, as and for his Complaint against Defendant Marlo Marketing Communications, Incorporated (“Marlo” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of copyrighted photographs of plastic waste piled along streets and canals registered by Delano, a Tokyo based photojournalist. Accordingly, Delano seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b).

PARTIES

5. Delano is a professional photojournalist having a usual place of business at 8-17-4 Seijo, Setagaya-Ku, Tokyo, 157-0066-Japan.

6. Upon information and belief, Marlo is a domestic profit corporation duly organized and existing under the laws of the State of Massachusetts, with a place of business at 79 Madison Avenue, 2nd Floor, New York, New York 10016. At all times material hereto, Marlo has owned and operated a website at the URL: www.MarlowMarketing.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photographs

7. Delano photographed plastic waste piled along streets and canals (the "Photographs"). True and correct copies of the Photographs are attached hereto as Exhibit A.

8. Delano is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs were registered with the United States Copyright Office and were given Copyright Registration Number VA 2-057-380.

B. Defendant's Infringing Activities

10. Marlo ran an article on the Website entitled *Say No to Water Bottle Waste*. See <https://marlomarketing.com/say-no-water-bottle-waste/>. The article prominently featured the Photographs. A true and correct copy of the article is attached hereto as Exhibit B.

11. The Photographs appears on Marlo's servers.

12. Marlo did not license the Photographs from Plaintiff for its article, nor did Marlo have Plaintiff's permission or consent to publish the Photographs on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST MARLO)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Marlo infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. Marlo is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photographs.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Marlo have been willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

17. As a direct and proximate cause of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover his damages and defendant's profits pursuant to 17 U.S.C. § 504(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Marlo be adjudged to have infringed upon Plaintiff's copyright in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs;

3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
September 4, 2017

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz
Richard P. Liebowitz
11 Sunrise Plaza, Suite 305
Valley Stream, New York 11580
Telephone: (516) 233-1660
RL@LiebowitzLawFirm.com

Attorneys for Plaintiff James Whitlow Delano